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Attorneys for Defendants  
MP3TUNES, LLC and  
MICHAEL ROBERTSON

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, INC.; CAROLINE  
RECORDS, INC.; EMI CHRISTIAN MUSIC  
GROUP INC.; PRIORITY RECORDS LLC;  
VIRGIN RECORDS AMERICA, INC.;  
BEECHWOOD MUSIC CORP.; COLGEMS-  
EMI MUSIC INC.; EMI APRIL MUSIC INC;  
EMI BLACKWOOD MUSIC; EMI FULL  
KEEL MUSIC; EMI GOLDEN TORCH  
MUSIC CORP; EMI LONGITUDE MUSIC;  
EMI VIRGIN MUSIC, INC.; EMI VIRGIN  
SONGS, INC.,

Plaintiffs,

v.

MP3TUNES, LLC AND MICHAEL  
ROBERTSON

Defendants.

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No. 07 Civ. 9931 (WHP)


**DEFENDANTS' MP3TUNES, LLC AND  
MICHAEL ROBERTSON'S MOTION TO  
DISMISS OR TRANSFER**

Defendants MP3Tunes, LLC and Michael Robertson, through counsel, hereby move this Court to dismiss the present action in favor of a mirror image first-filed action, captioned *MP3Tunes LLC v. EMI Group, Ltd, et al.*, Case No. 07CV1844WQH (NLS), pending in the United States District Court for the Southern District of California. Alternatively, for the convenience of the parties and in the interest of judicial economy, Defendants move this Court to transfer this action to the Southern District of California pursuant to 28 U.S.C. § 1404(a).

The grounds for this motion are set forth fully in Defendants' opening brief, which is being served and file contemporaneously herewith.

Respectfully submitted,

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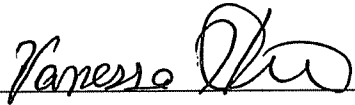
Attorneys for Defendants  
MP3TUNES, LLC and  
MICHAEL ROBERTSON

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following this 22<sup>nd</sup> day of February, 2008:

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